

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEON COLEMAN,

Plaintiff,

Civil Action No. 12-10099

v.

Hon. Mark A. Goldsmith
Mag. Judge Laurie J. Michelson

M. GULLET, *et al.*,

Defendants.

**REPORT AND RECOMMENDATION TO DISMISS
GULLET, UNIDENTIFIED DR., MORRISEY, LAMBERT, WILCOT, AND LEE**

The Federal Rules provide that where, as here, a plaintiff proceeds *in forma pauperis*, “the U.S. Marshal, upon order of the Court, shall serve the summons and the complaint upon each defendant.” *Kaufman v. Corizon Health, Inc.*, No. 12-10162, 2012 WL 5830229, at *1 (E.D. Mich. Oct. 31, 2012), *report and recommendation adopted*, 2012 WL 5830298 (E.D. Mich. Nov. 16, 2012) (citing Fed. R. Civ. P. 4(c)(3)). Here, however, even after considerable effort by the Court and the U.S. Marshal, the U.S. Marshal has not been able to serve certain individuals that Plaintiff Deon Coleman named in his Complaint. For this reason, the Court RECOMMENDS that six individuals—M. Gullet, “Unidentified Dr.,” M. (Mark) Morrissey, Dr. Lambert (or Limbert), Wilcot, and Dr. Lee—be DISMISSED WITHOUT PREJUDICE.

Recognizing that one attempt to serve Gullet, Morrissey, Lambert, McLean, Wilcot, and Lee had been unsuccessful, on February 15, 2013, this Court entered an order informing Plaintiff as follows:

The Court will direct the U.S. Marshals to make one more attempt to serve Gullet, Morrissey, Lambert, McLean, Wilcot, and Lee. Before

doing so, however, Plaintiff is ordered to provide any additional identifying information he has for these Defendants on or before March 4, 2013. Plaintiff may also attempt to further identify “Unidentified Dr.” The Court gives notice that if Gullet, Morrissey, Lambert, McLean, Wilcot, Lee, and “Unidentified Dr.” remain unserved after this next service attempt, this Court may recommend that they be dismissed from this suit.

(Dkt. 103, Feb. 15, 2013 Order Regarding Service at 2-3.)

Upon receiving and reviewing Plaintiff’s February 20, 2013 response to this order (*see* Dkt. 108), this Court directed the U.S. Marshal to again serve Gullet, Morrissey, Lambert, Wilcot,¹ McLean, and Lee. (Dkt. 111, March 20, 2013 Order Directing Service.) As the Court had no further information about “Unidentified Dr.,” the Court did not direct service on that unknown individual. In March and April 2013, the U.S. Marshal made a second attempt to serve Gullet, Morrissey, Lambert, Wilcot, McLean, and Lee. Even after this second effort, however, five of these six individuals—Gullet, Morrissey, Lambert, Wilcot, and Lee—remain unserved.

Accordingly, the Court RECOMMENDS that Gullet, Morrissey, Lambert, Wilcot, and Lee, along with “Unidentified Dr.” be DISMISSED WITHOUT PREJUDICE. *See Kaufman*, 2012 WL 5830229, at *1 (“Once a plaintiff has been notified that all attempts at service have been unsuccessful and the plaintiff does not present a new or updated address, ‘[n]either his pro se status nor his incarceration constitute good cause for the lack of service.’” (quoting *Davis v. Macconnell*, No. 3:11cv00090, 2011 WL 5326256, at *3 (S.D. Ohio Sept. 16, 2011))), *report and recommendation adopted*, 2012 WL 5830298.

The parties to this action may object to and seek review of this Report and Recommendation

¹In his February 20, 2013 response, it appeared to the Court that Coleman wrote “Wilcox” rather than “Wilcot.” (*See* Dkt. 108.) Accordingly, the Court directed the U.S. Marshal to attempt to serve “Wilcox.”

within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596 (6th Cir. 2006); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *McClanahan v. Comm’r of Soc. Sec.*, 474 F.3d 830 (6th Cir. 2006) (internal quotation marks omitted); *Frontier*, 454 F.3d at 596-97. Objections are to be filed through the Case Management/Electronic Case Filing (CM/ECF) system or, if an appropriate exception applies, through the Clerk’s Office. *See* E.D. Mich. LR 5.1. A copy of any objections is to be served upon this magistrate judge but this does not constitute filing. *See* E.D. Mich. LR 72.1(d)(2). Once an objection is filed, a response is due within fourteen (14) days of service, and a reply brief may be filed within seven (7) days of service of the response. E.D. Mich. LR 72.1(d)(3), (4).

s/Laurie J. Michelson
 LAURIE J. MICHELSON
 UNITED STATES MAGISTRATE JUDGE

Dated: August 6, 2013

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on August 6, 2013.

s/Jane Johnson
 Deputy Clerk